



# **MICHIGAN DISTRIBUTORS AND VENDORS ASSOCIATION, INC.**

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**Polly T. Reber**, President

**TESTIMONY  
Before  
TAX POLICY COMMITTEE  
MICHIGAN HOUSE OF REPRESENTATIVES**

**June 9, 2010  
RE: HB 6219 & 6220**

**Polly Reber, President  
Michigan Distributors & Vendors Association**

Thank you for this opportunity to testify before you today. The Michigan Distributors & Vendors Association opposes HB 6219 & 6220.

The Michigan Distributors and Vendors Association (MDVA) represents vending and food service businesses all across the state. Our member companies provide vending/food service management services to business, industrial, educational, healthcare, and public locations. The vending industry which started out many years ago with mechanical candy and cigarette coin operated machines has evolved into an industry that can offer almost everything found in a convenience store through a high tech machine operating on a cashless guaranteed vend system. The industry today also participates in many efforts to provide more healthy options to its customers through such national programs as "Fit Pick," "Better for You," and "Healthy Options."

Michigan's vended products sales tax exemption, which HB 6219 & 6220 seek to eliminate, has been described as a "tax loophole." That statement is inaccurate. However, as much as we have attempted to correct this inaccuracy every time we hear it or see it, it does not go away. In fact, after years of this erroneous label, the vended products tax exemption has almost become synonymous with "tax loophole." It is used as the very example of a "tax loophole." But the fact is, nothing could be further from the truth. I very much appreciate this opportunity to present the issue accurately to this committee.

Merriam-Webster Dictionary defines a loophole as "an ambiguity or omission in the text through which the intent of a statute may be evaded." What I hope to prove to you is that the exemption for vended products in the sales tax act is not an ambiguity or omission, but the intentional and sound tax policy, put in place to provide for parity in the marketplace; and that there has much deliberation over many years in the Legislative, Administrative, and Judicial branches of government, with many hours of testimony taken.

Michigan's General Sales Tax Act, adopted in 1933, was amended by Constitutional amendment on November 5, 1974, to exempt prescription drugs and food "except in the case of prepared food intended for immediate consumption as defined by law." Thus, food not prepared for immediate consumption was not taxed. Since that time, the Legislature, Attorney General opinions, and Department of Treasury Revenue Administrative Bulletins have all defined by law the interpretation of this section of the Michigan Constitution.

In 1978, the Legislature enacted P.A. 275, amending the sales tax act to include a list of the snack food items that were sold from vending machines at that time and specifically exempted the sale of those vended items from taxation. The items were milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, and chips. Additionally, an Attorney General Opinion, No. 5710 issued May 21, 1980, stated that bakery products for off-premises consumption such as donuts, pastries, bread and cakes, remained exempted from sales tax in vending machines. As a result of this interpretation, many vending businesses were able to receive refunds for taxes paid on bakery products prior to 1980.

However, in the late 1980's and early 1990's, Treasury auditors began to interpret the language from P.A. 275 of 1978, as not allowing an exemption from taxation for bakery items. In 1990, Treasury issued an RAB to provide some guidance to vending businesses and Treasury auditors as to what food and drinks from vending machines were subject to tax. RAB 1990-7, imposed taxes on food sold through a vending machine unless the item was one of the 9 specifically identified food categories stated in P.A. 275. Further, a 1991 Decision and Order of Determination from the Commission of Revenue concluded that baked goods bought through a vending machine were not specifically enumerated as exempt from taxation, thus requiring sales be paid on them.

Confusion as to the applicability of the sales tax to bakery items led to another Treasury RAB, 1991-18, to attempt to "clarify" the sales tax exemption for food purchased for human consumption. The Department of Treasury's interpretation was the subject of a challenge brought in the Court of Claims in *Variety Foodservice, Inc. v State of Michigan*, File no. 92-14202-CM. In a decision rendered on January 8, 1993, the Department of Treasury's interpretation of Section 4g(4)(e) was upheld by Court of Claims Judge Michael G. Harrison. No appeal was taken from Judge Harrison's ruling at the time. However, in 1995, the Legislature responded by enacting P.A. 63, that added "bakery products" to the list of exempted vended products, to expand the list of specifically enumerated items as exempt from taxation when sold through a vending machine.

During this same time, vending businesses continued to experience Treasury's conflicting interpretations of the 9, and then 10 specifically identified food categories in audits. In many cases Treasury officials so narrowly defined the law as to be absurd.

At this point, members of the Legislature, Department of Treasury, and vending industry came together to work out a more realistic method of taxation to more accurately represent the

industry today and the intent of the law. The result was P.A. 576 of 1996, that defined prepared food for immediate consumption (and therefore to be taxed) as food or drink sold from machines heated above 75 degrees or cooled below 65 degrees with the exception of juices. All items in snack machines, which are not heated or cooled, are untaxed as food not for immediate consumption. This scenario most closely mirrors the tax scheme of food and beverage, with the exception of pop, as sold everywhere else in the marketplace. That is to say, food items sold from cooled or heated food machines and therefore taxed are the same items sold in restaurants, cafeterias, fast food chains and taxed. The items sold in room temperature snack machines and therefore not taxed are the same items that are sold in convenience stores, gas stations, grocery stores and not taxed.

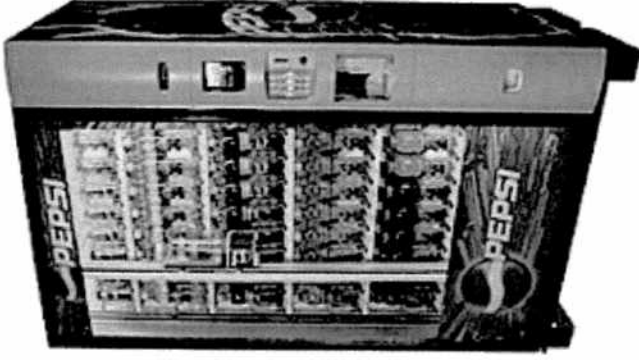
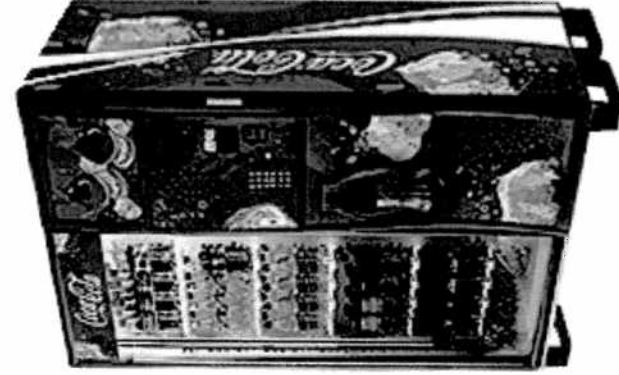
In 2000, when the Legislature enacted P.A. 417, total tax parity was finally achieved as non-alcoholic beverages in sealed containers were exempt from sales tax in vending machines as they always had been exempt in convenience stores, gas stations, grocery stores. This is what we have today: equitable, fair, intentional tax policy; not a loophole.

MDVA opposes HB 6219 and 6220, as a targeted tax increase that would put our industry at a severe competitive disadvantage. The vending industry has suffered greatly during Michigan's difficult economic times. For many years our largest locations were in auto industry factories. As the auto industry declined so did our businesses and many of them are struggling to survive. However, we are not asking for a bailout. We are simply asking for is an opportunity to compete fairly in the marketplace.

# Michigan Sales Tax

- All food and beverages not prepared for immediate consumption are not taxed wherever they are sold.

## Vending Machines



BEVERAGES NOT TAXED

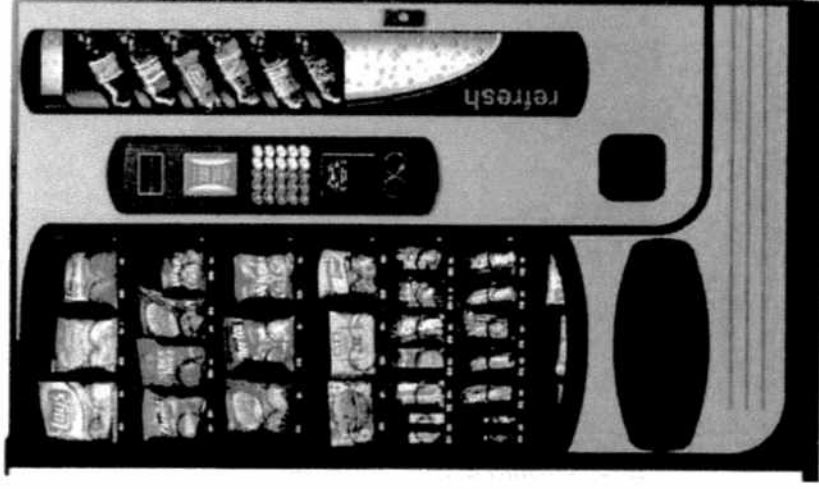
## Convenience Store



BEVERAGES NOT TAXED

- All food and beverages not prepared for immediate consumption are not taxed wherever they are sold.

### Vending Machine



SNACK FOODS NOT TAXED

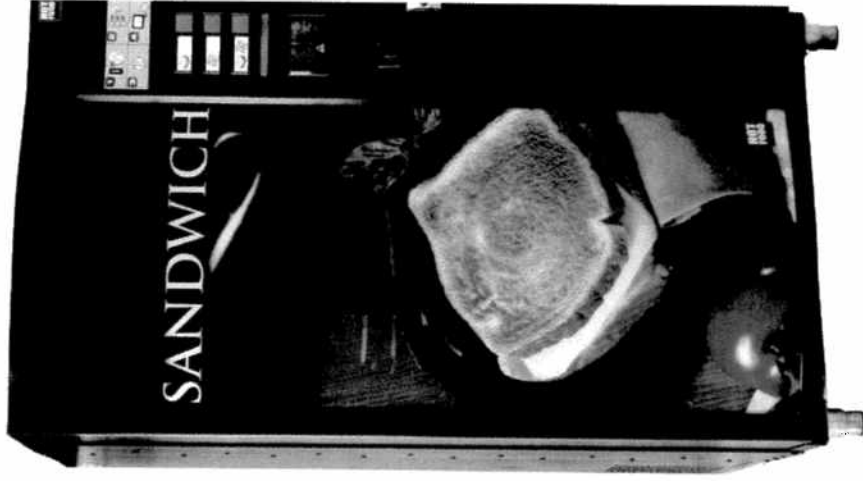
### Convenience Store



SNACKS FOOD NOT TAXED

- Food and beverages prepared for immediate consumption are taxed wherever they are sold in the marketplace.

### Vending Machines



FOODS TAXED

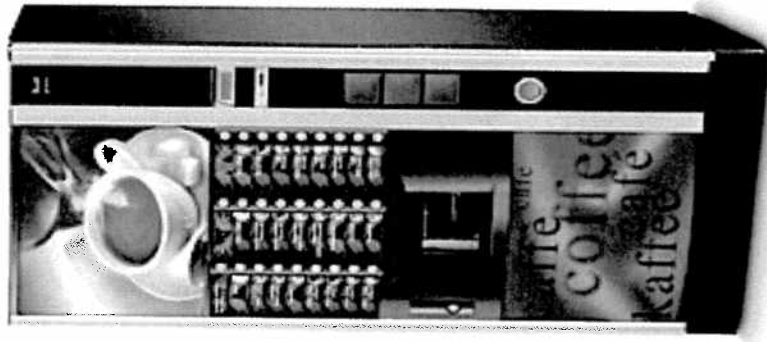
### Restaurants



FOODS TAXED

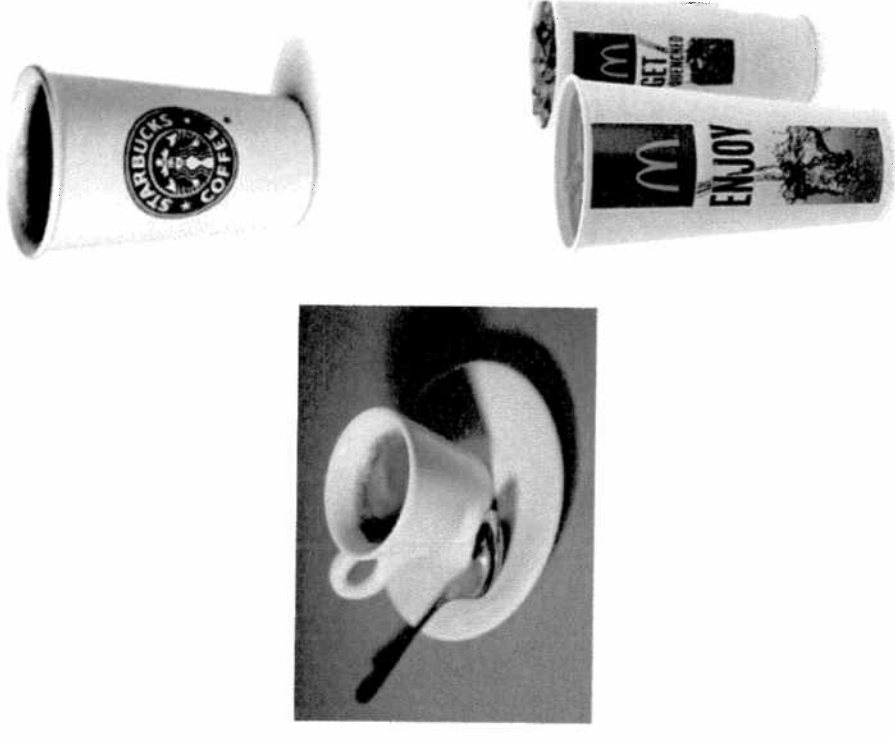
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### Vending Machines



**BEVERAGES TAXED**

### Restaurants



**BEVERAGES TAXED**